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| 09/709,233      | 11/09/2000  | Lewis T. Ladocsi     | 158.7019USU         | 3087             |

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EXAMINER

KALINOWSKI, ALEXANDER G

ART UNIT PAPER NUMBER

3626

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/709,233

Applicant(s)

LADOCSI ET AL.

Examiner

Alexander Kalinowski

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1-19 are presented for examination. In light of Applicant's amendment, the Examiner withdraws the grounds of rejection of claim 1-19 based on 35 USC 112(2). Based on Applicant's arguments, the Examiner withdraws the grounds of rejection of claims 1-19 based on 35 USC 103. However, new grounds of rejection are established in the office for claims 1-19 as set forth in detail in the sections below.

***Response to Arguments***

2. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11, 13, 14, and 16-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts"

(i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the instant claims fail to recite the use of any type of technology (e.g. computer system, data processor) within the recited steps of the claimed method of predicting life expectancy. The recited steps constitute an idea on how to predict life expectancy of an individual.

Mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case the claimed method recites steps for determining the life expectancy of an individual.

Although the claimed invention produces a useful, concrete and tangible result, since the claimed invention as a whole is not within the technological arts, as explained above, claims 11, 13, 14, and 16-18 are deemed to be directed to non statutory subject matter. The Examiner suggests adding language within the body of the claim limitations indicating that the method steps are carried out through the use of technology (i.e. processor, computer).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5, 6, 8, 11-13, 15, 16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendrick, Pat. No. 5,031,161 in view of Minturn, Pat. No. 5,692,501.

As per claim 1, Kendrick discloses a life expectancy management system (i.e. microprocessor based)(see abstract) which comprises:

a means for altering or adjusting said data based upon the occurrence of at least one event (i.e. resetting operation)(col. 5, line 54 – col. 6, line 65)

a means for predicting life expectancy based upon said health profile data and said altered or adjusted data (see claims 1 and 5, col. 4, lines 1-22 and col. 5, line 54 – col. 6, line 65).

Kendrick does not explicitly disclose

a means which is capable of storing health profile data.

However, Minturn discloses a means which is capable of storing health profile data (i.e. optimal health/fitness database)(col. 12, lines 47-60 and col. 14, lines 37-58). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include means which is capable of storing health profile data as disclosed by Minturn within Kendrick for the motivation of

counseling participants in making positive improvements in their measured levels of optimum wellness, health and outlook (col. 10, lines 5-12).

As per claim 2, Kendrick does not explicitly disclose the system according to claim 1 wherein the storage means is a machine readable storage medium.

However, Minturn discloses the system according to claim 1 wherein the storage means is a machine readable storage medium (i.e. software)(col. 13, lines 1-3). ). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein the storage means is a machine readable storage medium as disclosed by Minturn within Kendrick for the motivation of counseling participants in making positive improvements in their measured levels of optimum wellness, health and outlook (col. 10, lines 5-12).

As per claim 3, Kendrick does not explicitly disclose the system according to claim 1 wherein said health profile data comprises at least one of the following: genetic data, birth data, lifestyle data, pediatric health data, and adulthood health data

However, Minturn discloses wherein said health profile data comprises at least one of the following: genetic data, birth data, lifestyle data, pediatric health data, and adulthood health data (i.e. personal medical, health and fitness histories)(col. 14, line 65 - col. 15, line 6). ). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include wherein said health profile data comprises at least one of the following: genetic data, birth data, lifestyle data, pediatric health data, and adulthood health data as disclosed by Minturn within Kendrick for the motivation of counseling participants in making

Art Unit: 3626

positive improvements in their measured levels of optimum wellness, health and outlook (col. 10, lines 5-12).

As per claim 5, Kendrick discloses the system according to claim 1 wherein said means for predicting life expectancy is a microprocessor comprising a prediction modeling logic (col. 6, lines 29-37)

As per claim 6, Kendrick discloses the system according to claim 5 wherein said prediction modeling logic provides a predetermined life expectancy which is reduced by deviations from expectations which are calculated from said health profile data and said altered or adjusted data (col. 4, lines 1-5 and col. 6, lines 29-40).

As per claim 8, Kendrick does not explicitly disclose the system according to claim 1 wherein said means for altering said data is a microprocessor and/or Internet service provider which is in communication with said storage means.

However, Minturn wherein said means for altering said data is a microprocessor and/or Internet service provider which is in communication with said storage means (Fig. 1 and col. 12, line 66 - col. 13, line 32). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include said means for altering said data is a microprocessor and/or Internet service provider which is in communication with said storage means as disclosed by Minturn within Kendrick for the motivation of counseling the maximum number of participants in making positive improvements in their measured levels of optimum wellness, health and outlook (col. 10, lines 5-12).

As per claims 11-13, 15, 16 and 18-19, the claims are substantially similar to claims 1-3, 5, 6, and 8 and are rejected on the same basis.

6. Claims 4, 7, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendrick and Minturn as applied to claims 1, 6, 11 and 16 above, and further in view of Summerell et al., Pat. No. 5,937,387 (hereinafter Summerell).

As per claim 4, Kendrick and Minturn do not explicitly disclose the system according to claim 1 wherein said event is selected from the group consisting of: chronic and routine health events, emergency health events, pregnancy data and medical advancements.

However, Summerell discloses said event is selected from the group consisting of: chronic and routine health events, emergency health events, pregnancy data and medical advancements (see Fig. 10). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include said event is selected from the group consisting of: chronic and routine health events, emergency health events, pregnancy data and medical advancements as disclosed by Summerell within Kendrick and Minturn for the motivation of counseling individuals to adopt healthy lifestyles (col. 2, lines 57-65).

As per claim 7, Kendrick and Minturn do not explicitly disclose the system according to claim 6 further comprising a means for providing recommended



goals and incentives based upon the life expectancy predicted and the predetermined life expectancy.

However, Summerell discloses a means for providing recommended goals and/or incentives based upon the predicted physiological age and the chronological age (col. 17, lines 7-27). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include a means for providing recommended goals and/or incentives based upon predetermined and predicted wellness and life goals as disclosed by Summerell within the life expectancy system of Kendrick and Minter for the motivation of counseling individuals to adopt healthy lifestyles (col. 2, lines 57-65).

As to claims 14 and 17, the claims are similar in scope to claims 4 and 7 and are rejected on the same basis.

Claims 9, 10, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kendrick and Minturn as applied to claims 1 and 11 above, and further in view of Ballantyne et al., Pat. No. 5,867,821 (hereinafter Ballantyne).

As per claims 9, 10 and 17, Kendrick and Minturn do not explicitly disclose the system according to claim 1 further comprising a means for providing secure access only to said health profile data and said altered or adjusted data.

However, Ballantyne discloses a means for providing secure access only to said health profile data and said altered or adjusted data (i.e. personal ID number)(col. 7, line 66 - col. 8, line 34). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include a means for

Art Unit: 3626

providing secure access only to said health profile data and/or said altered or adjusted data as disclosed by Ballantyne within Kendrick and Minturn for the motivation of authenticating individuals requesting access to the health profile data (i.e. health record database)(col. 8, lines 1-5).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. "Quiz a fun way to take a look at longevity" discloses an internet web site that determines an individual's life expectancy.
- b. "Live long and prosper into the Millennium..." discloses an internet web site that determines an individual's life expectancy.
- c. "Measuring mortality ..." discloses an internet web site that determines an individual's life expectancy.

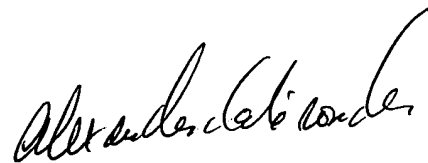
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski, whose telephone number is (703) 305-2398. The examiner can normally be reached on Monday to Thursday from 9:00 AM to 6:30 PM. In addition, the examiner can be reached on alternate Fridays.

If any attempt to reached the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (703) 305-9588. The fax telephone number for this group is (703) 305-7687 (for official communications including After Final communications labeled "Box AF").

Art Unit: 3626

Hand delivered responses should be brought to Crystal Park 5, 2451

Crystal Drive, Arlington, VA, 7th Floor, receptionist.

A handwritten signature in black ink, appearing to read "Alexander Kalinowski". The signature is fluid and cursive, with the first name "Alexander" written in a larger, more prominent script than the last name "Kalinowski".

Alexander Kalinowski

Primary Examiner

Art Unit 3626

1/24/04